STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	**01/25/99**	Bill No:	**AB 214**
Tax:	**Sales and Use**	Author:	**Machado**
Board Position:		Related Bills:	

BILL SUMMARY:

This bill would, among other things, exempt from sales and use tax beginning January 1, 2002 the sale and purchase of liquefied petroleum gas (LPG) that is delivered to a “qualified residence,” as defined, by the seller, that is sold for household use in the qualified residence.

ANALYSIS:

Current Law:

Under existing law, the sales tax or the use tax applies to the sale or use of tangible personal property in this state, unless specifically exempted. Existing law, Section 6353 of the Sales and Use Tax Law, provides an exemption from the sale and use tax for the sale or use of gas delivered to consumers through mains, lines, or pipes. Sales of LPG delivered to consumers through mains, lines, or pipes, therefore, currently qualify for the exemption from tax.

However, in order to be exempt under Section 6353, the LPG must be sold in vaporized form and delivered to the purchaser through mains, lines or pipes. The Board has determined that this requirement is met even if the gas is initially delivered in liquid form to a tank on the purchaser’s premises if the tank belongs to the seller of the gas, or is leased by the seller from the purchaser, and there is an explicit agreement between them stating that the seller retains title to and possession of the LPG until it is delivered in vapor form to the customer through the customer’s mains or pipes.

Proposed Law:

This bill would amend Section 6353 of the Sales and Use Tax Law to provide an exemption from sales and use tax beginning January 1, 2002 for the sale and use of liquefied petroleum gas, that is delivered by the seller to a qualified residence, for household use in the qualified residence.

The bill would define “qualified rural residence” as a residence with a tank storage capacity for LPG that is equal to or greater than 30 gallons.

In addition, this bill would authorize local jurisdictions that are authorized to impose a utility user tax to impose a substantially similar tax upon LPG.

Background:

The original Retail Sales Tax Act, enacted in 1933, provided the current exemption from sales and use tax of gas, electricity, and water when delivered to consumers through mains, lines or pipes.

Chapter 402 of the Statutes of 1972 expanded this exemption to include water sold in bulk quantities of 50 gallons or more for general household use if the residence is not serviced by mains, lines, or pipes.

Chapter 1010 of the Statutes of 1978 included exhaust steam, waste steam, heat or resultant energy, produced in connection with cogeneration technology.

Chapter 420, Statutes of 1986, specified that water delivered through mains, lines or pipes, for purposes of the exemption, includes steam and geothermal steam, brines and heat.

Similar bills to AB 214 have been considered in the past. During the 1997-98 Legislative Session, AB 1019 (Machado, et al.) was held in the Senate Appropriations Committee. In the 1995-96 Session, SB 1455 (Leslie, et al.) failed passage in the Senate Revenue and Taxation Committee. The Board's position on both these measures was "neutral." Other bills proposing to exempt various fuel and gas substances for residential use not delivered through mains, lines or pipes include: AB 149 (Chappie) of the 1977-78 session, AB 359 (Chappie) of the 1979-80 session, AB 10 (Kelly) and AB 130 (Lockyer) of the 1981-82 session, AB 2203 (Kelly) of the 1983-84 session, AB 2117 (Hannigan) and AB 2562 (Seastrand) of the 1985-86 session and AB 127 (Areias) of the 1987-88 session.

COMMENTS:

1. Purpose of the bill. According to the author's office, the purpose of this bill is to provide equal tax treatment for those who must use liquefied petroleum gas because their residences are not located in areas serviced through mains, lines, or pipes to qualify for the existing exemption. These consumers generally live in rural areas and use the LPG for cooking and heating. The bill is sponsored by the Western Propane Gas Association.

2. LPG sellers would have an additional record-keeping burden. Many LPG sellers provide a complete LPG service. In other words, in addition to selling LPG for residential purposes, many LPG sellers sell for commercial, industrial, agricultural, motor fuel, and forklift purposes. Enactment of this measure would require LPG sellers to separately account for LPG sold for residential uses from other sales for purposes of filing sales and use tax returns and reporting the tax.

COST ESTIMATE:

Some costs would be incurred in notifying affected retailers, and verifying deductions claimed on LPG sellers' sales tax returns. An estimate of these costs is pending.

REVENUE ESTIMATE:

The US Department of Energy, Energy Information Administration (EIA) publishes two reports that contain estimates of the amount of LPG sold for residential use in California. The *State Energy Data Report* estimates that 205.1 million gallons of LPG were sold in California for residential use during 1995. The *Residential Energy Consumption Survey* report estimates that 70 million gallons were sold for use in principal residences in California during 1993.

The difference between the two reports is significant. It is too large to be accounted for by vacation homes and gas barbecues. In discussions with the EIA about the two reports, the following information was obtained. The 205.1 million gallon figure from the *State Energy Data Report* is derived from a survey done by the International Petroleum Association for EIA and one element of that survey is LPG for residential - commercial use. EIA has estimated that 85% of the residential - commercial LPG is for residential use.

The 70 million gallon figure published in the *Residential Energy Consumption Survey* was derived from a survey conducted in 7,100 households in the United States, 699 of which were in California. This is out of 11 million households in California. Of the 699, the report did not mention how many households used LPG, but it was a very small number. The report estimates that only 300,000 households out of 11 million (about 2.7%) use LPG. This means that only 2.7% of the 699 samples, or 19 households, were included in the sample. In addition, this report included only principal residences and not second or vacation homes.

The following table shows a comparison between electricity, natural gas and LPG. All figures are from the *Residential Energy Consumption Survey*.

Energy Source	Average Consumption (million BTUs)	Average Floorspace (square feet)
Electricity	60.9	1,609
Natural Gas	51.0	1,635
LPG	26.0	1,491

It would seem reasonable to expect that heating a home or heating water for a home or producing electricity for household appliances would require the same amount of BTUs regardless of the energy source. A BTU (British Thermal Unit) is the quantity of heat required to raise one pound of water one degree Fahrenheit. The average BTUs consumed by electric homes is 38 thousand BTUs per square foot (60.9 million BTUs/1609 square feet = 38 thousand BTUs per square foot). The average for gas homes is 31 thousand BTUs per square foot (51.0 million BTUs/1635 square feet = 31 thousand BTUs per square foot). For LPG homes, the average is 17 thousand BTUs per square foot (26 million BTUs/1491 square feet = 17 thousand BTUs per square foot).

The LPG usage does not appear reasonable when compared with the other energy sources. If 70 million gallons were used by 300,000 households, then each household would use 233 gallons of LPG per year. At $1.19 per gallon these households would incur costs of only $277 per year for energy. This does not seem reasonable.

If we use an average of 35 thousand BTUs per square foot to estimate the amount of LPG used for principal residences, we get 144 million gallons ((35/17) x 70 million gallons = 144 million gallons).

The current estimated average price of LPG sold for residential use is $1.19 per gallon. Estimated total sales of LPG for use in principal residences are $171 million (144 million gallons @ $1.19 per gallon = $171 million).

This bill would exempt LPG used in both principal residences and second or vacation homes. It would not exempt most LPG used in barbecues as most of this LPG is not delivered to residences and is not stored in tanks with a capacity of 30 gallons or more. Based on information from EIA, it is estimated that the average barbecue uses 40 pounds of LPG per year. The conversion factor is 4.5 pounds per gallon. That would mean that each barbecue would use 9 gallons per year. There are an estimated 1.5 million LPG barbecues in California, and if each one uses 9 gallons per year, then the total LPG used in barbecues would be 13.5 million gallons.

Subtracting the 13.5 million gallons used in barbecues from the 205.1 million gallons reported in the *State Energy Data Report* leaves 191.6 million gallons. Subtracting the 144 million gallons used in principal residences in California leaves 47.6 million gallons that would be used in second or vacation homes. At an average of 480 gallons per home (144 million gallons / 300,000 homes = 480 gallons per home), this would indicate that there are 99,200 second or vacation homes using LPG in California. No information was available regarding the number of second or vacation homes in California that use LPG. If we assume that there are indeed 99,200 second or vacation homes using LPG in California, then the total LPG sold for residential use would be 191.6 million gallons.

Some of the LPG sold for residential use is already exempt under Section 6353 because the gas was delivered through mains, lines or pipes. The Board has determined that the requirements of Section 6353 have been met even if the propane is initially delivered in liquid form to a tank on the purchaser's premises if the tank belongs to the seller of the propane, or is leased by the seller from the purchaser, and there is an explicit agreement between them passing title to the gas at the time it enters the customer's pipes in vapor form.

After discussions with the Board's Sales and Use Tax Division and the Western Propane Gas Association, we estimate that approximately 20 percent of the LPG sold for residential use is currently exempt. The total gallons that would be exempted by this proposal each year would therefore be 153.3 million (191.6 million x 80% = 153.3 million).

At $1.19 per gallon, annual sales are estimated to be $182.4 million.

Revenue Summary

The annual revenue impact from exempting the $182.4 million in sales of liquefied petroleum gas to qualified residences from the sales and use tax would be as follows:

	Revenue Effect
State loss (5%)	$9.1 million
Local loss (2.25%)	4.1 million
Transit loss (0.67%)	1.2 million
Total	$14.4 million

Qualifying Remarks

This bill would also allow a city, county, or city and county that is authorized to impose a utility user tax to impose that tax on LPG that is exempted from the sales and use tax by this bill. Most residences using LPG for home energy needs are located in non-urban areas. Homes in urban areas usually have access to electricity and/or natural gas delivered through lines, mains or pipes. There are currently only 5 counties that levy a utility user tax in the unincorporated portions of their counties. These counties represent only 6% of California's population. The average utility user tax rate for these counties is 4.15%. If these counties expanded their current utility users tax to include the LPG exempted by this bill, they would raise $0.5 million ($182.4 million in exempt LPG sales x .06 x .0415 = $0.5 million).

While this bill would allow other jurisdictions to impose a utility user tax on the LPG exempted by this bill, it is questionable that jurisdictions that do not currently impose this tax on existing consumption of electricity, gas, water, sewer, telephone, telegraph, and cable television services would actually impose the tax only for LPG consumption.

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This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.